

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Classification, Services and Compensation

Compensation

Demotional Pay Adjustments: State Service

Proposed Amendment: N.J.A.C. 4A:3-4.10

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 11A:2-6(d) and 11A:3-1 et seq.; and P.L. 2008, c. 29.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-001.

A public hearing concerning the proposal will be held on:

Tuesday, January 24, 2012 at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by March 3, 2012 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Civil Service Commission

P.O. Box 312

Trenton, New Jersey 08625-0312

The agency proposal follows:

Summary

In the Civil Service Commission (Commission) decision of *In the Matter of Walter Sharpe, Department of Transportation* (decided July 30, 2008), the Commission noted that N.J.A.C. 4A:3-4.10, Demotional pay adjustments: State service, may need to be clarified with respect to compensation in certain voluntary but non-disciplinary demotional situations, while adhering to the prohibition against an employee gaining a “salary advantage” in this transaction.

Following an internal review of N.J.A.C. 4A:3-4.10, it was determined that a definition of “salary advantage” would be helpful, but that it would be clearer to call it a “salary increase,” the abuse of which is the real concern in certain voluntary but non-disciplinary demotional situations. Therefore, a proposed amendment to existing subsection (e) would delete the language prohibiting the use of the rule to gain a salary advantage for the employee. This language would be replaced with new subsection (e), which would prohibit the use of the rule to gain a salary increase for an employee, with two exceptions. The first exception is a situation in which an employee is moving from a managerial to a non-managerial title and the applicable salary regulation (for example, Salary Regulation fiscal year 2011, Section 4 – Miscellaneous, issued March 16, 2011) provides for a salary increase for

the employee. The second exception addresses a situation in which an employee receives a salary increase due to a change in workweek.

A change to N.J.A.C. 4A:3-4.10(c)3 is also proposed to address concerns that some individuals “game” the system by taking a demotion that is other than disciplinary or in lieu of removal after serving only four months in the higher title in order to receive more money than he or she had been earning in the lower title prior to the promotion. Therefore, to discourage such “gaming,” paragraph (c)3 would be changed to provide that an employee may only obtain a salary adjustment under the circumstances described after serving at least 12 months in the higher title.

An additional technical change to N.J.A.C. 4A:3-4.10 is proposed to reflect the provisions of P.L. 2008, c. 29. Pursuant to that law, the Department of Personnel was abolished and replaced with the Civil Service Commission, a State agency in but not of the Department of Labor and Workforce Development. The law also provided that the Commissioner of Personnel be replaced by a Chairperson of the Civil Service Commission. Therefore, subparagraph (c)3iii would be amended to delete a reference to the Department of Personnel and replace it with a reference to the Chairperson of the Civil Service Commission or designee.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

A social impact is not anticipated to result from the proposed amendment. It would not affect the availability to a State employee of a voluntary demotion, as provided in N.J.A.C. 4A:3-4.10(c). Furthermore, the proposed amendment would not affect the involuntary demotions enumerated in subsections (a) and (b).

Economic Impact

With regard to State employees taking a voluntary demotion, no economic impact is anticipated. This is because the intention of the proposed amendment is to prevent a manipulation of the civil service compensation system for the purpose of obtaining for an employee an increase in salary to which the employee would not otherwise be entitled.

As an example, an employee serving in a Principal Clerk Typist title, salary range R12, is at step four and earning \$38,162.03 with an anniversary date of pay period 12/12. The employee receives a promotion to the title of Secretarial Assistant 3, salary range A15. In accordance with N.J.A.C. 4A:3-4.9, Advancement pay adjustments: State service, the employee's salary is adjusted by applying a salary increment that is equal to at least one increment in the range of the former title plus the amount necessary to place the employee on the next higher step in the new range. Using this formula, the employee ends up at step two of range A15, earning \$40,119.83. The employee's anniversary date of pay period 12/12 is retained since the total salary increase is less than two increments in the employee's previous range.

Six months later, the employee takes a voluntary demotion back to the prior held title of Principal Clerk Typist. In accordance with N.J.A.C. 4A:3-4.10, the employee's salary is reduced one increment in the higher range (A15), after which the employee's salary in the lower range (R12) is set at the step that is equal to or higher than the reduced salary. The anniversary date is retained because this transaction does not result in the employee reaching step eight or nine. Accordingly, upon returning to the lower title, the employee is now at step five instead of the step four of six months earlier, and is earning \$39,650.84, over \$1,000 more than she was earning six months earlier, with an anniversary date still at pay period 12/12.

If an employee must wait at least 12 months rather than four before taking a voluntary demotion, the potential for a premature salary increase as just illustrated is essentially negated.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment pertains to compensation for State employees in certain demotional situations and does not refer to any Federal law, standards, or requirements.

Jobs Impact

It is not anticipated that the proposed amendment would cause the generation or loss of jobs. The proposed amendment pertains to compensation for State employees in certain demotional situations.

Agriculture Industry Impact

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment pertains to compensation for State employees in certain demotional situations.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment pertains to compensation for State employees in certain demotional situations.

Housing Affordability Impact Analysis

Since it concerns compensation for State employees in certain demotional situations, the proposed amendment would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since it concerns compensation for State employees in certain demotional situations, the proposed amendment would have no impact on smart growth or on housing production or new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

4A:3-4.10 Demotional pay adjustments: State service

(a) The salary of an employee who receives a disciplinary demotion shall be adjusted by reducing the employee's salary one increment in the higher range. Then, the

employee's salary in the lower range will be set at the step that is equal to or next lower than such reduced salary.

1. The adjustment in (a) above shall be made after adjustment for workweek. See N.J.A.C. 4A:3-4.9(f).

i. When a workweek change occurs for an employee whose salary is between steps of the range, the following calculation shall be made to accommodate the workweek adjustment: Divide the amount of extra salary by the amount of the increment of the employee's current salary range. This will provide a percentage of the current increment represented by the extra salary. Adjust the employee's salary to the workweek adjusted range at the same step. Calculate the amount of extra salary by applying the percentage arrived at above to the increment of the workweek adjusted range.

2. The anniversary date is retained, unless the action results in step eight or nine, in which case the anniversary date is based on the effective date of the action.

(b) When an appointing authority demotes an employee involuntarily in lieu of removal due to loss of qualifications for job title (for example, a Truck Driver whose license is suspended is demoted to a Building Maintenance Worker), salary and anniversary date shall be determined as provided in (a) above. If the employee is subsequently returned to the former title, he or she may be appointed up to and including the step held prior to the demotion.

(c) If the demotion is other than disciplinary or in lieu of removal under (b) above, the employee's salary shall be reduced one increment in the higher range. Then the

employee's salary in the lower range will be set at the step that is equal to or next higher than such reduced salary.

1. The adjustment in (c) above is made after adjustment for workweek. See N.J.A.C. 4A:3-4.9(f).

2. The anniversary date is retained, unless the action results in step eight or nine.

i. If the action results in step eight, the employee shall be eligible for advancement to step nine, if warranted by performance, on the pay period that reflects the difference between the time served on the step prior to demotion and 39 pay periods.

ii. If the action results in step nine, the anniversary date is based on the effective date of the action.

3. This adjustment shall be applied only when the employee has served at least [four] **12** months in the higher title and:

i. The employee has previously held the lower title;

ii. The employee is being demoted in lieu of layoff; or

iii. The [Department of Personnel] **Chairperson of the Civil Service Commission or designee** finds that service in the higher title provided significant preparation and training for service in the lower title.

4. If the conditions in (c)3 above are not met, then salary and anniversary date shall be determined by reconstructing the employee's salary as if the employee had remained in or been appointed to the lower title on the date he or she was appointed to the higher title. N.J.A.C. 4A:3-4.4 may be applied, but in no case shall an

employee receive a higher salary than that calculated through the application of (c) above.

(d) For all non-disciplinary demotions except voluntary demotions and those provided in (b) above, an employee demoted to a title lower than the class code of his or her permanent title must be given 45 days' notice of demotion by the appointing authority.

[(e) In no event shall this section be used to gain a salary advantage for an employee.]

(e) This section shall not be used to gain a salary increase for an employee, except in the following situations:

- 1. An employee is moving from a managerial to a non-managerial title and the applicable salary regulation issued in accordance with the annual Appropriations Act provides that the affected employee shall receive a salary increase; or**
- 2. The employee receives a salary increase due to a change in workweek.**